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Case No. 87-1781

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

RICHARD L. DUGGER, Secretary, Florida Department of Offender Rehabilitation,

Petitioner,

v.

JON S. MILLER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE LOWER COURT PROPERLY INTERPRETED COLORADO V. CONNELLY, 479 U. S. ____, 107 S. Ct. 515 (1986), AS CONTINUING TO REQUIRE THAT A CRIMINAL DEFENDANT HAVE THE MENTAL CAPACITY TO WAIVE HIS CONSTITUTIONAL RIGHTS KNOWINGLY AND INTELLIGENTLY BEFORE ADMITTING AT TRIAL ANY INCULPATORY STATEMENTS MADE BY THE DEFENDANT TO POLICE OFFICERS DURING A CUSTODIAL INTERROGATION.

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JURISDICTIONAL STATEMENT

Petitioner fails to state which of the specific provisions of Rule 17, Rules of the Supreme Court of the United States, it invokes in petitioning this Court for writ of certiorari. Respondent submits that subparts (a) and (b) of Rule 17 are inapplicable and provide no basis for the petition for writ of certiorari. Respondent further submits that where, as here, the Petitioner requests only that the Court clarify its holding in Colorado v. Connelly, 479 U.S. _____, 107 S.Ct. 515 (1986), subpart (c) of Rule 17 is equally unavailing.

STATEMENT OF THE CASE

As expressly noted by the Court of Appeals, the Respondent Jon S. Miller had a history of mental illness prior to his arrest. (A-11, n.4)[1]. According to his own testimony at trial, Miller abused drugs during the 1960's, and was hospitalized or treated for mental conditions at various times from 1960 to 1965 in Belleview Mental Hospital in New York, St. Mary's Hospital in San Francisco, Tampa General Hospital, and in Massachusetts. (Tr. 3-311 through 315, 3-345).

The record further establishes that following his arrest and after counsel was appointed to represent him, the state trial court appointed two psychiatrists to evaluate Miller's competency to stand trial. (Tr. 5-889,890). These psychiatrists agreed that Miller was incompetent to stand trial. (Tr. 5-893, 894). Miller therefore was committed to the Florida State Hospital where he received psychiatric care and treatment for two and one half years before the court determined that his competency had been restored sufficiently to stand trial. (Tr.5-904, 911, 1095).[2]

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[1] As used herein, "A-___" refers to the appendix to the petition for writ of certiorari and the relevant page number; "Tr. 3-311" refers to the state trial court transcript and relevant volume and page number, e.g., here volume 3, page 311; "Pet-____" refers to the petition for writ of certiorari and the relevant page number; "SCT - ___" refers to the volume of the state court trial transcript entitled "State Court Transcript of Record Index" and the page number of said volume; and "R-___" refers to the record on appeal and the docket entry to said record.

[2] Despite this finding, the same court later sentenced Miller, after trial, to death based in part upon its finding that he was suffering from an incurable and dangerous mental illness at the time of the murder. (R-11; see Miller v. State, 373 So.2d 882 (Fla. 1979)).

At trial, the court appointed psychiatrists testified that Miller was insane at the time he committed the murder. (Tr. 3-385 through 3-440, 4-445 through 4-464). The police officer who arrested Miller testified that at the time of his arrest Miller stated that an atomic bomb was going to explode (Tr. 2-180), and that he acted irrationally, appeared to hallucinate, laughed, talked to himself, and at times was unresponsive to questions. (Tr. 2-180,181). The Lee County jailor responsible for Miller on the night of his arrest testified that Miller acted abnormal in his presence and that Miller's strange behavior did not appear alcohol related but rather the behavior of one who was incompetent or on drugs. (Tr. 3-277, 279, 280). The jailor further testified that at the time of trial, after Miller had spent approximately two and one half years being treated in mental institutions, Miller appeared different than on the night of his arrest. (Tr. 3-281).

Witnesses who observed Miller on the afternoon of the murder also testified that he was mumbling to himself, that he appeared angry, that a wild look and change came over him when he purchased a knife, and that they were sufficiently alarmed by his unusual manner to call the police. (Tr. 2-30, 33 through 35). Finally, Miller's cellmate testified that on the night of Miller's arrest and interrogation, Miller would jump on his bed, pull his feet under him and yell "chicken man". (Tr. 3-205). Thus, there was substantial competent evidence before the state trial court that at the time of the murder and his interrogation several hours later, Miller was insane and without the capacity knowingly and intelligently to waive his constitutional rights.

The record below also indicates that Miller did not knowingly and intelligently waive his constitutional rights, and

contradicts the assertion of the Petitioner that the police officers interrogating Miller "had no indication that [he] was of insufficient intelligence to understand the rights he was waiving or what the consequences of his waiver would be". (Pet-16). The record further contradicts Petitioner's assertion that the record clearly establishes Miller's willingness to waive his rights and continue the interrogation. (Pet-16,17).

Miller, who identified himself at the time of the interrogation as Robert Christopher, initially responded to the officers' request that he waive his constitutional rights and speak with them as follows: "I receive the vibrations, I mean I received the -- the general attitude, and I -- and I understood that I could remain silent, but I understood your attitude , and I -- I decided I'd like to (inaudible)." (A-69; SCT-975 through 977). While Miller later stated that he understood his rights, as expressly noted by the Court of Appeals most of his responses to the officers' questions were "yeah" or "uh huh" and when the officers again reminded Miller of his rights, he appeared confused and disoriented. (A-10). Still later during his interrogation, Miller refused to sign a form indicating that he understood his rights and became more passive and uncooperative. (A-10; SCT-998 through 1000). Finally, Miller specifically informed the officers during the interrogation "[w]ell, I've been mentally -- I'm very mentally disturbed", to which one of the officers responded, "[y]eah, I understand" and then changed the subject. (A-9, n.3; SCT-1020). Thus, the record also raises clear questions whether Miller had in fact waived his constitutional rights intelligently and knowingly, and whether the police officers' should have been aware of his inability to do so.

SUMMARY OF ARGUMENT

Some twenty-eight years ago, this Court in Blackburn v. Alabama, 361 U.S. 199, 207 (1960) noted that the use of a confession given to police officers while the defendant was incompetent affronts our civilization's most basic sense of justice. This Court has consistently reiterated this principle in its subsequent decisions, most recently in Colorado v. Connelly, 479 U. S. ____, 107 S.Ct. 515 (1986). Petitioner attempts herein, however, to limit this long established principle to instances in which the defendant, at the time of the confession, exhibits an objective manifestation of his inability to understand his constitutional rights, and cites the Colorado v. Connelly decision as authority for its argument.

Respondent submits that the Court of Appeals properly rejected Petitioner's argument and followed the clear instruction provided by this Court's prior decisions, including Colorado v. Connelly, which champion the rights of incompetent defendants and abhor the evidentiary use of confessions or admissions made by defendants while incompetent. To ensure to incompetent defendants the continued fundamental fairness and freedom from self incrimination guaranteed by the Fourteenth Amendment to all citizens--competent and incompetent alike--this Court should deny the petition for writ of certiorari and allow the mandate of the Court of Appeals to issue.

ARGUMENT

The Court of Appeals properly interpreted Colorado v. Connelly as continuing to require that a criminal defendant have the mental capacity to waive his constitutional rights knowingly and intelligently before admitting at trial any inculpatory statements made by the defendant to police officers during a custodial interrogation.

The Petitioner argues that the Court of Appeals by its decision has established a standard for determining the "intelligence" of a waiver which does not comport with constitutional dictates, (Pet-7), and that "[c]ompetency to confess is not an issue arising under the United States Constitution." (Pet-9). Petitioner further argues that Colorado v. Connelly established that the only questions to be addressed by courts in determining the admissibility of a confession is whether the police obtained the confession through coercion and/or whether the defendant exhibited an objective manifestation of his understanding and waiver of his constitutional rights. Absent such objective manifestation, Petitioner argues, there cannot be any police overreaching rendering an insane defendant's custodial statements inadmissible at trial.

Respondent submits that contrary to Petitioner's argument, the Court of Appeals did not establish a new standard regarding the admissibility of confessions. Rather, the Court of Appeals merely followed long established principles established by this Court in numerous decisions which require that before a confession elicited by police officers during a custodial interrogation is admitted into evidence, the state must first establish that the a defendant knowingly and intelligently waived

his constitutional rights. Respondent further submits that a criminal defendant's competency to confess involves an issue that this Court has long held to be an integral part of the fundamental fairness doctrine of the Fourteenth Amendment to the United States Constitution. Finally, Respondent submits that Colorado v. Connelly recognized and reaffirmed these principles and merely noted that where a criminal defendant has the ability to know and understand his rights so as to make a knowing waiver, the courts will not examine the defendant's motive for exercising such rights absent overreaching conduct by the police.

The facts of Colorado v. Connelly are simple but important. There, unlike the instant case, the defendant initiated the communications with the police regarding the crime. The defendant simply approached a police officer on the street, stopped him and confessed to a crime. The police officer then informed the defendant of his constitutional rights, which the defendant acknowledged and waived. The police then took the defendant into custody, at which time the defendant continued to volunteer statements regarding the crime. Based upon this information, the state charged the defendant with the crime.

At trial, however, the defendant alleged that his statements to the police were involuntary. He alleged that the statements were involuntary because his "free will" had been overborne by voices of God telling him that confessing the crime was the right thing to do. Unlike the instant case, however, the defendant did not allege that he did not have the capacity to understand his constitutional rights at the time he made the statements. Indeed, all of the evidence before the Court was that the defendant's cognitive abilities were not impaired and that he

understood the rights as read by the police officer, 479 U.S. at _____, 107 S.Ct. at 519, a point expressly acknowledged by the Court of Appeals below. (A-38). The issue before this Court in Colorado v. Connelly, therefore, was not, as in the instant case, whether the defendant's mental capacity rendered his statements involuntary because he was not competent to waive his constitutional rights knowingly and intelligently; rather, the issue was whether the defendant's motive or reason for confessing should be considered a basis upon which to consider the statements involuntary.

This Court understandably declined to enter the potential judicial morass of weighing the myriad of potential reasons and motives why defendants give confessions, with one caveat: where police conduct is alleged to be overreaching and coercive so as to serve possibly as the motive or reason for the defendant's confession, then the Courts will look to the defendant's motive for making the inculpatory statement. Thus, this Court held that "[a]bsent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." 479 U.S. at _____, 107 S.Ct. at 520 (footnote omitted). Under the facts of Colorado v. Connelly, therefore -- where the defendant's cognitive abilities were not impaired, he inititated all communications with the police, and the police conduct was proper -- this Court held that the confession was voluntary. Thus, the specific holding of this Court in Colorado v. Connelly is that where a defendant has the ability to understand his rights and actions, the Court will not examine the defendant's motive for making the confession absent coercive activities by the police.

The Petitioner improperly argues, however, that Colorado v.

Connelly stands for the proposition that a criminal defendant's constitutional rights cannot be violated during a custodial interrogation unless there is overreaching conduct by the police or the defendant objectively manifests an inability to exercise his rights. This interpretation, as discussed above, is simply incorrect. In drawing this broad brush conclusion, the Petitioner fails to acknowledge that this Court predicated its holding in Colorado v. Connelly on a crucial finding absent in this case, a finding that the defendant was competent and had the cognitive abilities to understand and exercise his constitutional rights knowingly and intelligently. The Colorado v. Connelly decision simply held that where a defendant has this capacity, the Court will not attempt to evaluate the propriety of the motive or reason which convinced the defendant to confess. Absent coercive activities by the police, the defendant's motive is irrelevant as long as he has the ability otherwise to understand and exercise his constitutional rights.

The important distinction between this case and Colorado v. Connelly, therefore, as noted by the Court of Appeals, is that the defendant therein had the cognitive ability to understand and exercise his constitutional rights while the Respondent in this action did not. Under such circumstances, the strict holding in Colorado v. Connelly requires that Respondent's conviction be overturned as based upon an involuntary confession, and therefore fundamentally unfair. Indeed, it is difficult to conceive of a situation that is more involuntary and unfair than allowing the police to elicit statements from an accused who is incompetent and unable to understand his constitutional rights or control his responses. As noted by this Court over twenty-six years ago,

> "[s]urely in the present stage of our civilization a most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the

> basis of a statement he made while insane; and this judgment can without difficulty be articulated in terms of the unreliability of the confession, the lack of rational choice of the accused, or simply a strong conviction that our system of law enforcement should not operate so as to take advantage of a person in this fashion."

Blackburn v. Alabama, 361 U. S. 199, 207 (1960).

The aim of the Fourteenth Amendment's requirement of due process is in part to prevent fundamental unfairness in the use of evidence. Colorado v. Connelly, 479 U.S. at ____, 107 S.Ct. at 483. If ever a situation gives rise to such fundamental unfairness, the circumstances of the instant case do. When taken into custody and interrogated for over an hour by two policemen, Respondent was incapable of thinking rationally and powerless to exercise his constitutional rights and to protect himself. Indeed, given Respondent's condition the police officers reading to him his constitutional rights was the equivalent of not reading such rights to a competent defendant. This Court in Miranda v. Arizona, 384 U.S. 436 (1966) established over twenty years ago, however, that this latter situation violated constitutional protections regardless of whether the police actions were otherwise proper. To ensure this same fundamental fairness and freedom from self incrimination to incompetent defendants, this Court must similarly condemn the procedure employed below.

Indeed, under such circumstances the actions of the police officers should be considered "overreaching" in nature if such a finding is necessary to exclude the defendant's custodial statements from trial. As acknowledged by Petitioner, this Court in Miranda v. Arizona, 384 U.S. 436 (1966) recognized "the presumptive coercion arising from custodial interrogation."

(Pet-9). To the extent, therefore, that Colorado v. Connelly requires police overreaching as a predicate to exclude a defendant's confession, Respondent submits that where, as here, the police arrest and interrogate an incompetent defendant who is powerless to exercise his constitutional rights and to protect himself, the police actions must be considered overreaching in nature and the use of such confession at trial fundamentally unfair. Indeed, if such is not true, the Constitution effectively affords an incompetent criminal defendant fewer rights than a competent defendant, a truly incomprehensible result.

As recognized in Blackburn v. Alabama, 361 U.S. 199 (1960), the police simply should not be allowed to take advantage of a criminal defendant's incompetency and extract evidence from him that he otherwise would not provide if afforded counsel or allowed the benefit of his constitutional rights. Indeed, if the State through its police force is not prohibited from taking advantage of an incompetent person in such circumstances, the State will be allowed to assume wholly inconsistent positions toward its incompetent citizens. For instance, the State would on one hand protect its incompetent citizens from others in civil actions arising out of the incompetent person's improvident exercise of his civil rights, see, e.g., Fla. Stat.§ 744.331 (8) (1986)(rendering contracts or gifts made by an incompetent person void), while on the other hand refusing to provide similar protection in the context of criminal actions and, in fact, allowing the prosecution of such persons based upon statements elicited by the State while the citizen was unable to understand and appreciate either his constitutional rights or the nature of the proceedings involved. Respondent submits that such action by

the State is both overreaching and fundamentally unfair.

Finally, Respondent submits that the cases in which this Court has noted the requirement that a defendant "knowingly and intelligently" waive his constitutional rights are legion. In Miranda v. Arizona, for example, this Court acknowledged that even if the police undertook no improper acts to coerce a confession from a criminal defendant, a defendant's confession made during custodial interrogation is admissible only after the State establishes "that the defendant knowingly and intelligently waived his privilege against self incrimination and his right to retained or appointed counsel." 384 U. S. at 475 (emphasis added). See also Colorado v. Spring, ____ U. S.____, 107 S.Ct. 851 (1987); Moran v. Turbine, 475 U.S. 412 (1986); Edwards v. Arizona, 451 U.S. 477, 482 (1981) ("It is reasonably clear from our cases that waivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege..."); Tague v. Louisiana, 444 U.S. 469 (1980); North Carolina v. Butler, 441 U.S. 369, 373 (1979) ("An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the Miranda case.") (Emphasis added).

This Court in Johnson v. Zerbst, 304 U.S. 458, 464 (1938) long ago established the standard for determining whether a valid waiver existed.

> "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination

> whether there has been an intelligent waiver ...must depend in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."

Petitioner seeks, however, to strip this requirement and standard from our nation's jurisprudence and to substitute in its place[3] a new standard of "objective manifestation" of waiver. This "see no evil" approach to the admissibility of inculpatory statements made by incompetent criminal defendants is untenable and must be rejected. Simply stated, an incompetent defendant held for interrogation effectively is stripped of all meaningful rights and is helpless to defend himself from any statements the police might elicit from him. To hold that statements made by such a criminal defendant during custodial interrogation are admissible at trial as long as the defendant appears "normal" when making the statement must constitute the very same type of procedure found abhorrent and unconstitutional by this Court in Blackburn v. Alabama.

Indeed, the fundamental unfairness of this procedure must be considered no less than had the police failed to inform a competent defendant of his constitutional rights, a procedure again condemned by this Court in Miranda v. Arizona; in both

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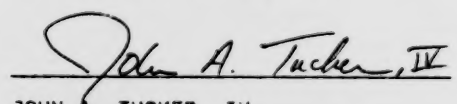
[3] Despite Petitioner's desire to utilize an objective standard to determine whether a waiver is valid -- a procedure presumably suggested to assist police officers -- Petitioner acknowledges that police officers are not trained to detect whether an incompetent defendant exhibits the capacity to understand and waive his constitutional rights, and that it is unreasonable to require police officers to attempt to do so. Petitioner's new standard, however, would presumably place this duty squarely with the interrogating officer. Respondent submits that this evaluation is more properly and effectively performed within the court system aided by the testimony of expert witnesses at the time the State attempts to introduce the statement into evidence at trial.

instances neither defendant is aware of and therefore able to exercise his constitutional rights knowingly and intelligently. To ensure the same fundamental fairness and freedom from self incrimination to incompetent defendants as guaranteed to competent defendants, this Court must reject the new standard proposed by the Petitioner and continue to require that an allegedly incompetent criminal defendant, whether apparently sane or obviously incompetent, actually make a knowing and intelligent waiver of his constitutional rights before admitting any custodial statements into evidence at trial.

CONCLUSION

For the foregoing reasons, Respondent submits that the Court should deny the petition for writ of certiorari and allow the mandate of the United States Court of Appeals for the Eleventh Circuit to issue.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, JOHN A. TUCKER, IV, counsel for the Respondent, certify that my application to the Bar of the United States Supreme Court is currently pending with the Clerk of the Court; I further certify that on the 23rd day of May, 1988, I served three copies of the Respondent's Brief in Opposition to Petition for Writ of Certiorari on ROBERT J. KRAUSS, Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammel Building, Tampa, Florida, 33602, by United States Mail in a duly addressed envelope with first class postage prepaid.

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